

ARTICLE 16

PROHIBITION OF SIMULATED GAMBLING DEVICES

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ARTICLE 16

PROHIBITION OF SIMULATED GAMBLING DEVICES

SEC. 4-16.00 FINDINGS AND PURPOSE. The City Council of the City of Hayward finds as follows:

- A. Pursuant to Article XI, Section 5 of the California Constitution and the City Charter, the City of Hayward may make and enforce all regulations and ordinances in respect to municipal affairs.
- B. Pursuant to Article XI, Section 7 of the California Constitution the City of Hayward may make and enforce all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- C. Pursuant to California Government Code Section 38771 the City Council may declare what activities or conditions may constitute a nuisance.
- D. It is a goal of the City Council to establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area, with a high quality of life in an attractive, secure environment for the City's residents and businesses.
- E. In Hayward, businesses describing themselves variously as "business centers" and "internet cafes" have opened within the City. These businesses purport to offer customers access to personal computers, photocopy and facsimile services. In an apparent effort to promote the sale of such services the business offers entries into a sweepstakes, the results of which may be revealed in several ways, including by playing games on the business' computers. Patrons can select from multiple games, many of which have the appearance of casino-style games of chance, such as slot machines. Winning sweepstakes entries may be redeemed at the business for cash payouts.
- F. Businesses that utilize simulated gambling devices, such as those found in "business centers" and "internet cafes" in Hayward present unique challenges for local government. These businesses provide the allure of traditional gambling by offering casino-like computer games and cash prizes without facing the strict regulations imposed by the State on traditional gambling.

- G. Many of the negative community impacts that might be expected from a gambling establishment have manifested themselves in relation to “business centers” and “Internet cafes” that provide simulated gambling devices in Hayward. At least one establishment was the target of a robbery and another was the site of multiple arrests by Alameda County Sheriff’s deputies and California Department of Corrections and Rehabilitation parole officers.
- H. The City Council and City offices have received numerous complaints from community members voicing concern over these businesses that they perceive as “gambling houses” operating within the City.
- I. The intent of the City Council in adopting this ordinance is to protect public health, safety and welfare by prohibiting broadly the possession or use of simulated gambling devices, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the City Council in prohibiting simulated gambling devices in no way intends to approve the use of actual slot machines, other forms of casino gambling or other types of gambling devices that may be regulated pursuant to California law. In addition, this prohibition is aimed directly at devices that simulate gambling activity, regardless of whether the devices or the simulations in and of themselves can be said to constitute gambling as that term may be defined elsewhere.

SEC. 4-16.10 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

- (a) "Person" means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director, executive, officer or manager of an association, partnership, joint venture, corporation or other organization.
- (b) "Simulated gambling device" means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee. The following rules of construction apply to this definition of "simulated gambling device":

- (1) The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.
- (2) The term "upon connection with" means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.
- (3) The term "object" means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.
- (4) The terms "play or operate" or "play or operation" includes the use of skill, the application of the element of chance, or both.
- (5) The term "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.
- (6) The term "game" includes slot machines, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, and any other game associated with gambling or which could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.
- (7) The term "payoff" means cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.

- (8) The use of the word "gambling" in the term "simulated gambling device" is for convenience of reference only. The term "simulated gambling device" as used in this Article is defined exclusively by this subsection and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.
- (c) "Slot machine" has the same meaning as specified in Section 330b of the California Penal Code.

SEC. 4-16.20 SIMLUATED GAMBLING DEVICES PROHIBITED. It is unlawful for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this section.

SEC. 4-16.30 EXEMPTIONS. This Article does not prohibit an individual's personal, recreational, and non-commercial ownership, possession, play, operation or use of a device which could be construed to be a simulated gambling device.

SEC. 4-16.40 CONSTRUCTION WITH STATE LAW. Nothing in this Article is intended to conflict with the provisions of state law concerning gambling, slot machines, gambling devices or lotteries. In the event of a direct and express conflict between this Article and state law, California law, as applicable, controls.

SEC. 4-16.50 VIOLATIONS. A violation of this Article shall be a misdemeanor subject to a fine of \$1000 or imprisonment in County jail for six (6) months, or both a fine and imprisonment. A violation of this Article is also declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in this Code for abatement of nuisances.

SEC. 4-16.60 APPLICATION. The provisions of this Article shall apply retroactively to any person who commenced to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices prior to the effective date of this Article and engages in such activity after the effective date of this Article, regardless of whether that person was previously issued a permit or license by the City of Hayward.